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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/527,574

03/14/2005

Sebastien Perrot

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24498

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09/02/2009

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EXAMINER

RUTKOWSKI, JEFFREY M

ART UNIT

PAPER NUMBER

2416

MAIL DATE

DELIVERY MODE

09/02/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<p align="center"><b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b></p>	<p><b>Application No.</b> 10/527,574</p>	<p><b>Applicant(s)</b> PERROT ET AL.</p>	
	<p><b>Examiner</b> JEFFREY M. RUTKOWSKI</p>	<p><b>Art Unit</b> 2416</p>	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 105275

20 August 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: \_\_\_\_\_.
- Claim(s) objected to: \_\_\_\_\_.
- Claim(s) rejected: 1-7 and 9.
- Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_
13. ☐ Other: \_\_\_\_\_.

/Steven HD Nguyen/  
Primary Examiner, Art Unit 2416

Continuation of 7. There will be no changes to the grounds of rejection. The Applicant's claim amendments were only cosmetic in nature.

Continuation of 11. does NOT place the application in condition for allowance because: As an initial matter, the claims only require the wireless bridge to be made up of at least two bridge portals. For simplicity, the arguments will be addressed for the case where there is two bridge portals.

The argument with respect to the prior art not connecting all of the other bridges to the root bridge are not persuasive. The arguments suggests that the claims require the other bridge(s) be directly connected to the root bridge. However, the claims do not require there to be a direct connection between the root bridge and the other bridge(s). The claims do require the other bridge(s) to be connected to the root bridge. The claim scope does not limit how the other bridge(s) are connected to the root bridge. Also, figure 3 of Hart shows there are at least two bridges Bridge A (root bridge) and Bridge B that are directly connected.

The arguments with respect to the prior art having to consider wired and wireless ports when determining the root are not persuasive. The claim scope does not exclude the wired ports from being considered. The claims do require the bridge with the most wireless ports be the root. As stated in the Final Action, figure 6 of Ichikawa does show wireless bridges where the only difference between the bridges is the number of wireless ports that each bridge supports. Hart's figure 3 shows Bridge A (root bridge) has the most ports, seven total, that connect to the other bridges and was elected to be the root. The combination of Ichikawa and Hart does suggest electing the bridge with the most wireless ports root.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

The arguments with respect to there being no reason to rely on the number of wireless ports are not persuasive. Hart discloses that if there are an equal number of ports, then the bridge with the smallest station address value is chosen (page 13 left column 1<sup>st</sup> paragraph). Even though AP-1 to AP-4 in Ichikawa's invention have the same number of ports, the address of each bridge would be used to elect one of the AP-1 to AP-4 root. Additionally, the claims do not require the portal be elected root based only on the number of wireless ports, as indicated on page 5 paragraph 3 of the Applicant's reply. The claims only require the bridge with the most wireless ports be elected root. The argument with respect to the combination of Ichikawa and Hart not yielding predictable results are not persuasive. Since Ichikawa and Hart both disclose the use of Spanning Tree Protocols, the results of the combination would be predictable.